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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,985	09/26/2003	Lorraine M. Herger	YOR920030302US1	8862

7590 10/28/2008  
Ryan, Mason & Lewis, LLP  
90 Forest Avenue  
Locust Valley, NY 11560

EXAMINER
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PASS, NATALIE

ART UNIT	PAPER NUMBER
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3686

MAIL DATE	DELIVERY MODE
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10/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/671,985	<b>Applicant(s)</b> HERGER ET AL.	
	<b>Examiner</b> Natalie A. Pass	<b>Art Unit</b> 3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the amendment filed 7 July 2008. Claims 1-27 have been previously canceled. Claim 28 is amended and currently pending.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cairnes, et al., U.S. Patent Number 6139494, for substantially the same reasons given in the prior Office Action (paper number 20080319), and further in view of Pass, U.S. Patent Number 5818056. Further reasons appear hereinbelow.

(A) Claim 28 has been amended to include the recitation of:

- “about at least one environmental factor common to the plurality of patients”, at lines 6-7; and
- “wherein the information about the one or more patients comprises point of care data and context information”, at lines 10-11.’

As per these new limitations, Cairnes teaches a method as analyzed and discussed in the prior Office Action (paper number 20080319), further comprising

accessing information about ... and about at least one factor common to the plurality of patients (Cairnes; column 8, lines 29-31, column 16, lines 59-61); Examiner interprets Cairnes's teachings of "trends among various patients having similar conditions" (Cairnes; column 8, lines 29-31) and "triages the patients into two groups, patients 108 with CSI scores above 200 and patients 108 with CSI scores of 200 or less." (Cairnes; column 16, lines 59-61) to teach a form of accessing information about at least one factor common to the plurality of patients; and

wherein the information about the one or more patients comprises point of care data (Cairnes; column 5, lines 34-49, column 8, lines 34-45) and context information (Cairnes; column 8, line 55 to column 9, line 13, column 9, lines 20-27, column 9, line 45 to column 10, line 7).

Although Cairnes teaches accessing information about at least one factor common to the plurality of patients, Cairnes fails to explicitly disclose accessing information about at least one environmental factor common to the plurality of patients.

However, the above features are well-known in the art, as evidenced by Pass.

In particular, Pass teaches accessing information about at least one environmental factor common to the plurality of patients (Pass; column 2, lines 25-45, column 5, line 55 to column 6, line 18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Cairnes to include these limitations, as taught by Pass, with

the motivations of “[e]nabling monitoring of radiation exposure in the general population ... [to allow] ... large random population samples ... [to] ... be monitored to directly relate radiation exposure and its sequelae (e.g. cancer). This can lead to direct, as opposed to extrapolated, determinations of radiation risk,” (Pass; column 2, lines 1-9).

The remainder of the amendments to claim 28 appear to have been made merely to correct minor typographical or grammatical errors. While these changes render the language of the claims smoother and more consistent, they otherwise affect neither the scope and breadth of the claims as originally presented nor the manner in which the claims were interpreted by the Examiner when applying prior art within the previous Office Action.

As such, the recited claimed features are rejected for the same reasons given in the prior Office Action (paper number 20080319, section 3, pages 2-3), and incorporated herein.

### ***Response to Arguments***

4. Applicant’s arguments filed 7 July 2008 have been fully considered but they are moot in view of the new ground(s) of rejection.

### ***Conclusion***

5. Applicant’s amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened

statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. **Any response to this final action should be mailed to:**

Box AF  
Commissioner of Patents and Trademarks  
Washington D.C. 20231

**or faxed to:** (571) 273-8300.

For formal communications, please mark

"EXPEDITED PROCEDURE".

7. For informal or draft communications, please label "PROPOSED" or "DRAFT" on the front page of the communication and do NOT sign the communication. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie A. Pass whose telephone number is (571) 272-6774. The examiner can normally be reached on 9-6:30 Monday - Thursday and alternate Fridays.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/N. A. P./  
Examiner, Art Unit 3626  
October 26, 2008

/Gerald J. O'Connor/  
Supervisory Patent Examiner  
Group Art Unit 3686